

mony, that for want of due delivery a contract, though it may purport on the face of the writing to be perfect in form, in reality never took effect or came into existence as a contract. Instances of such can be found in *Pattle vs Hornibook* (1897) 1 ch. 25, and *Brown vs Howland* 15 A.R., 750; *Semple vs Kyle* (1902) 4 F. 421. A person may sign his promissory note and leave it on his desk. If it were to be stolen or blown into the street and picked up and passed on, it would not take effect as a contract for want of delivery.

"That is not the case before us :

"The note here in question, on the contrary, was delivered and the property in it was parted with. That, I think, is shown by the defendant's own plea that it was to avail the plaintiff as a security.

"The note therefore was evidence of a contract actually entered into. That being so, the defendant fell under the operation of the rule that oral testimony is not admissible to vary the contract. In endeavouring to prove a plea to the effect that he was under obligation to pay the note only in the event of a fall in the price of the shares, he was attempting to vary his written obligation to pay absolutely and at all events. In *New London Credit Syndicate vs Neale*, evidence was offered by the maker of a bill to prove that he delivered it upon an agreement that it would be renewed at maturity if he should apply for renewal. The evidence was rejected and in the decision in *Appeal* (1898), 2 Q.B., 487 it was said at p. 490 : "If the evidence be to the effect that the document is only "delivered as an escrow, or that it is not to take effect as "a contract until some condition is fulfilled, it is ad- "missible. But that is not this case. This document was "signed and handed over as a bill of exchange, but there